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MEMORIAL

TO THE

Congress of the United States

FROM THE

BOARD OF TRUSTEES

OF THE

UNIVERSITY OF MISSISSIPPI.

NASHVILLE, TENN.:
MARSHALL & BRUCE CO., STATIONERS AND PRINTERS.
1894.

This Memorial to the Congress of the United States has been prepared in accordance with the action of the Board of Trustees of the University of Mississippi, taken June 12, 1893, when it was resolved: "That the Chancellor be requested to prepare a memorial to the Congress of the United States, asking the grant to this University of a township of land for the reasons outlined in his report this day made; that he submit such memorial, when prepared, for signatures of each member of this Board, and that when signed by as many as twelve (12) members of this Board, the same shall be treated as, and it shall be, the memorial of this Board, and the Chancellor will be authorized to lay the same before Congress."

Robert B. Fulton,

Chancellor.

University of Mississippi,
December 16, 1893.

MEMORIAL.

From Vol. XIX. of "House Miscellaneous Documents," second session of the Forty-seventh Congress, being the "History of the Public Domain," prepared under the direction of the Public Land Commission, by Thomas Donaldson, and published by the Public Land Commission in 1884 as the official history of the public domain and of the acts of Congress relating thereto, the following extracts are taken as an introduction to a detailed statement regarding the grant of land made by Congress for the support of a seminary of learning in the State of Mississippi.

From page 223:

The lands granted in the States, and reserved in the Territories for educational purposes by acts of Congress from 1785 to June, 1880, were—

FOR PUBLIC OR COMMON SCHOOLS.

Every sixteenth section of public land in the States admitted prior to 1848, and every sixteenth and thirty-sixth section of such land in States and Territories since organized—estimated at 67,893,919 acres.

FOR SEMINARIES OR UNIVERSITIES.

The quantity of two townships, or 46,080 acres, in each State or Territory containing public land, and, in some instances a greater quantity, for the support of seminaries or schools of higher grade, estimated at 1,165,520 acres.

FOR AGRICULTURAL AND MECHANICAL COLLEGES.

. . . . Land in place, 1,770,000 acres; land scrip, 7,830,000 acres; total, 9,600,000 acres.

From page 226:

UNIVERSITIES.

July 23, 1787, Congress, in the "*Powers to the Board of Treasury to contract for the sale of Western Territory*," ordered—

That not more than two complete townships be given perpetually for the purpose of an university, to be laid off by the purchaser or purchasers as near the center as may be, so that the same shall be of good land, to be applied to the intended object by the Legislature of the State.

This related to lands now in the State of Ohio, in the Symmes and Ohio Company purchases. This inaugurated the present method of taking from the public lands, for the support of schools or seminaries of a higher grade, the quantity of two townships at least, and in some instances more to each of the States containing public lands, and special grants have also been made to private enterprises.

In the legislation relating to the admission of public land States into the Union, from the admission of Ohio in 1802, to the admission of Colorado in 1876, grants of two townships of public lands, viz.: 46,080 acres, each for university purposes, are enumerated. Ohio, Florida, Wisconsin, and Minnesota are the exceptions, each having received more than two townships in area.

Nineteen States (up to 1882) have had the benefit of this provision, and the two townships are reserved in the Territories of Washington, New Mexico, and Utah. These will be granted and confirmed to them upon their admission into the Union.

From page 228:

UNIVERSITY GRANTS.

The following statement shows the number of acres granted to the States and reserved in the Territories of Washington, New Mexico, and Utah, for university purposes, by acts of Congress, the dates of which are given in proper column:

GRANTS AND RESERVATIONS FOR UNIVERSITIES.

States and Territories.	Total Area, Acres.	Under what Acts.
Ohio	69,120	April 21, 1792; March 3, 1803.
Indiana	46,080*	April 19, 1816; March 26, 1804.
Illinois	46,080	March 26, 1804; April 18, 1818.
Missouri	46,080	February 17, 1818; March 6, 1820.
Alabama	46,080	April 20, 1818; March 2, 1819.
Mississippi	46,080†	March 3, 1803; February 20, 1819.
Louisiana	46,080	April 21, 1806; March 3, 1811; March 3, 1827.
Michigan	46,080	June 23, 1836.
Arkansas	46,080	June 23, 1836.
Florida	92,160	March 3, 1845.
Iowa	46,080	March 3, 1845.
Wisconsin	92,160	August 6, 1846; December 15, 1854.
California	46,080	March 3, 1853.
Minnesota	82,640	March 2, 1861; February 26, 1857; July 8, 1870.
Oregon	46,080	February 14, 1859; March 2, 1861.
Kansas	46,080	January 29, 1861.
Nevada	46,080	July 4, 1866.
Nebraska	46,080	April 19, 1864.
Colorado	46,080	March 3, 1875.
Washington Territory	46,080	July 17, 1854; March 14, 1864.
New Mexico Territory	46,080	July 22, 1854.
Utah Territory	46,080	February 21, 1855.
Total	1,165,520	

From page 1250:

UNIVERSITY GRANTS TO DAKOTA, ARIZONA, IDAHO, AND WYOMING TERRITORIES.

Two townships of 23,040 acres each, six miles square, or 46,080 acres were reserved by the act of February 18, 1881, for a university in each of the Territories above named. . . . *All existing Territories and political divisions, save the District of Columbia, Indian Territory, and Alaska now have university grants.*

A careful examination of the acts of Congress cited above, and which may be readily found in the volumes entitled "*Land Laws of the United States,*" *compiled under the direction of the Public Land Commission, by Alexander T. Britton,* will show clearly that in the case of each and

*Three townships actually granted to Territorial and State Legislatures, as is shown on p. 17.
† Only one township received by Territory or State of Mississippi, as shown in this Memorial.

every State and Territory named in the foregoing list, the acts of Congress were so framed as to secure, beyond question, to each a clear title, without incumbrance of any kind, to *not less than two townships of public land for the support of a seminary of learning*, EXCEPTING ONLY THE STATE OF MISSISSIPPI. In every other case the grant of two townships was made not merely in the State, but *to the State or its Legislature*, in trust for the purpose named. The plan generally followed in the legislation of Congress was, first, when a territory was organized, to reserve from sale one township (or two) for the support of a seminary of learning therein, and then, when the Territory was organized into a State, to grant to the State, or in trust to its Legislature for the purpose named, two townships. This first step apparently was taken in the act of March 3, 1815, which reserved from sale in the Mississippi Territory (then embracing the area now included in the States of Alabama and Mississippi), "one entire township, to be located by the Secretary of the Treasury, for the use of a seminary of learning."

When the Alabama Territory was organized, by the act of April 20, 1818, there was reserved from sale "*in the Alabama Territory, an entire township, for the support of a seminary of learning within said Territory.* By the act of March 2, 1819, this township and another were "*vested in the Legislature of said State* [Alabama], *to be appropriated solely to the use of such seminary by the said Legislature.*"

But what was the legislation in regard to *the State of Mississippi, and the grant for a seminary of learning therein?*

The act of Congress making the grant is dated February 20, 1819, and its wording is peculiar. After the usual grant for a seat of government comes—

SEC. 2. *And be it further enacted*, That in addition to the township of land granted for the support of Jefferson College, there shall be granted in the said State another township, or a quantity of land equal thereto, to be located in tracts of not less than four entire sections each, which shall be vested in the Legislature of the said State, in trust for the support of a seminary of learning therein, which lands shall be located by the Secretary of the Treasury of the United States, whenever an extinguishment of Indian title shall be made for lands suitable, in his opinion, for that purpose, in the said State; which grant, hereby provided to be made, shall be considered as made in lieu of a township directed to be reserved by the fifth section of an act entitled "An act to provide for the ascertaining and surveying of the boundary line fixed by the treaty with the Creek Indians, and for other purposes," passed March 3, 1815; and which reserve of one township, provided to be made by the aforesaid fifth section of said act, shall be offered for sale in the same manner as the other public lands in the same district.

The effect of this act was to give to the Legislature of the State of Mississippi, in trust, for the support of a seminary of learning, only *one township of land, instead of two, the minimum number granted to any other State.* The reason for this is undoubtedly found in the reference to Jefferson College, and in a misunderstanding of the relation of that institution to the State of Mississippi. Evidently Congress regarded a donation of land made to Jefferson College by the acts of March 3, 1803, and February 20, 1812, as having been made to the State of Mississippi, or to an institution belonging to, or controlled by, the Territorial or State Legislature in Mississippi. *An examination of the charter and the history of Jefferson College up to the present time will show that this opinion was entirely erroneous.* A copy of the original act of the Territorial Legislature in Mississippi, incorporating "The trustees of Jefferson College," and passed May 13, 1802, is appended to this paper. It names the members of the original board of trustees, and defines their organization, their powers, and the purposes of their incorporation. It makes this board a self-perpetuating body, and this

feature in the charter was in nowise altered until the year 1826. Section 6 of the original charter states that, "As Jefferson College must, for the present, be supported by the voluntary contributions of citizens, the Board of Trustees are authorized to raise, for the benefit of said college, by lottery, a sum not exceeding ten thousand dollars. They shall also collect donations from the citizens of the Territory, and elsewhere." Nothing else is stated in the charter regarding the revenues of the college. Altogether, the charter is just such an act of incorporation as has been repeatedly adopted at the founding of a college not under the control of the State in any way. *To this corporation*, and not to the people or the Legislature of the Mississippi Territory, Congress donated the township of land which was reserved from sale by the act of Congress, dated March 3, 1803, and finally granted by the act of February 20, 1812. The terms of the grant in the act last specified make no mention of the people, or the Legislature, or the Governor of the Mississippi Territory.

The historian of the Public Domain, in the volume cited at the beginning of this paper, on page 212, classes the grant to Jefferson College, under the list of "*Donations and Special Grants*," and gives the order of the Secretary of the Treasury of the United States locating the lands, and dated October 5, 1812. It is important to note that the site of Jefferson College was near Natchez, in the present limits of *the State of Mississippi*, but the township granted to it was located on the Tombeckbee River, and this location was not changed up to the time when the act of Congress of February 20, 1819, was passed, although at that time the lands were situated in what had become the separate *Territory of Alabama*, by the act of March 3, 1817.

If, therefore, in the act of February 20, 1819, Congress considered that the grant made to Jefferson College had been made to the people or the Legislature of the Mississippi Territory, it assumed that a grant made to a private corporation had been made to the people, and assumed also that a township, actually then located within the limits of the Territory of Alabama, belonged to the people of Mississippi.

Without dwelling upon the complications that would have arisen if Mississippi had claimed the ownership of a township of land within the limits of the State of Alabama, attention is called to the fact, that from its foundation, in 1802, to the year 1826, there is nothing in the acts of the Territorial or State Legislatures in Mississippi indicating that Jefferson College was in any way under the control of the State. It is true that the Territorial Legislature in the act of December 13, 1816, provided for a loan of money to the trustees of Jefferson College, but it also provided that "*bond in double the amount should be taken*," and that suit should be instituted if the funds should not be returned at the stipulated time. Moreover, in the same act of December 13, 1816, the Legislature made donations of money to two other schools—Greene Academy and St. Stephen's Academy—which were, in no sense, State institutions, and not so regarded by the Legislature.

The Legislature and people of the newly-formed State of Mississippi were eager to utilize the means for public education afforded in the grants of land made by Congress in the act of February 20, 1819. It was, however, at once evident to the Legislature that it would have difficulty in securing control of the township which had been granted by Congress to Jefferson College, a private corporation. The act of Congress of February 20, 1819,

implied that the original grant to Jefferson College had been intended for the Territory and State of Mississippi. It was evident to the Legislature of the State that there was no valid ground on which it could base a claim to this township, however much it might desire to have this addition to the lands it had received from Congress for the support of common schools and a seminary of learning. The trustees of Jefferson College seemed willing to relinquish *some* of their rights as an independent corporation if thereby they might help the institution to prosperity, or gain assistance from the State.

The following extract from a "*Historical Sketch of Jefferson College, published by order of the Board of Trustees in* 1840," page 79, bears out this statement:

> To afford an opportunity to the Legislature of placing the institution [Jefferson College] more immediately under its control and management, and to give to it that patronage and support which *would be due to it as a State institution*, the trustees proposed to the next session of the Legislature, in January, 1825, a modification of their charter. The act of the thirtieth of January, 1826, was accordingly passed and accepted by the trustees.

It was clearly understood, by both the Legislature and the trustees of Jefferson College at this time, 1826, that the college was *not* a "State institution."

In 1829, the Legislature of the State adopted a resolution authorizing the Executive—

> To appoint *three agents* to inquire into all the means and resources in the State applicable to the purposes of general education; to confer with the trustees of Jefferson College and ascertain the condition and prospects of the institution, and whether it was practicable, and on what terms the trustees would surrender the charter to the State.
>
> The conference accordingly took place on the twenty-seventh of October, 1829, and an address, setting forth their views at large, was presented by the agents, accompanied by several interrogatories propounded by them as to the dimensions and arrangements of the college building, the endowments and available funds, the number and character of the

professors, its future prospects, the expediency of surrendering the charter, and, if the surrender was deemed inexpedient, what report the agents should make to the Legislature as to the money loaned to the institution. (*Extract from "Historical Sketch of Jefferson College," page* 83.)

From this same "Historical Sketch," published by the trustees of Jefferson College, the following statements are taken (*see pp.* 83, 84):

The temper of the board assembled on this occasion was most favorable to the desires of the agents. The investigation, however, given the subject by the committee appointed to prepare a reply on behalf of the trustees, satisfied not only the trustees, but the agents themselves, of the utter inexpediency, if not impracticability, of the measure.

. . . *As to the proposed surrender of the charter, it was shown that the proposition involved not merely the annihilation of Jefferson College, but the forfeiture of its resources*, and, consequently, could confer no benefit to any other institution, though established in its name; *that it could not, by the clearest principle of law, transmit its revenues or endowments to an institution erected in its stead;* for, as to all purposes to which they were designed, they would necessarily fail with the demise of the corporation in which they were originally vested. . . . *The land on the Tombigby, if it did not revert to the original grantor, would escheat to the State of Alabama.*

After this failure to secure the surrender of the charter of Jefferson College to the State, in 1829, on account of the difficulties indicated, all hope of the State's gaining control of the township of land granted by Congress to Jefferson College was lost, and the Legislature turned its attention to the proper administration of the trust connected with the *second* township mentioned in the act of Congress of February 20, 1819, and received previously to 1825. With this single township as a basis, the State has been able to establish and maintain a university superior in its facilities, and in the extent and character of its work, to what has been accomplished in most of the States that have received two or more townships of land for this purpose.

The single township received from Congress was well located, the lands were sold at a good price. The proceeds of all lands granted for the support of a seminary of learning were, by the act of the Legislature dated February 20, 1840, "appropriated for the use and benefit of the University of the State of Mississippi." The State pays to the University, annually, the sum of $32,643, as interest on a seminary fund of $544,050. The buildings, libraries, cabinets of apparatus, museums, and various improvements made; have cost at least $250,000. Since its opening in 1848, the University has had an average attendance of 240 students. It has graduated more than 1,100 from its academic and law schools. At the present time many of its buildings are old and in need of repairs. Its libraries and cabinets need many additions to meet the requirements of the work done in the University. New departments of instruction need to be added in order to keep the scope and character of its work fully abreast with what is done in similar institutions. In what has been done in the administration of the one township intrusted to the State by Congress for the support of a seminary, Mississippi can challenge comparison with any State that has received two townships.

Since the State of Mississippi has, for the reasons previously stated in this paper, *and through no fault of the authorities of the State*, failed to receive one of the two townships of land which it was evidently the intention of Congress to grant to the State for the support of a seminary of learning, the undersigned, representing the University of Mississippi, to which the Legislature of the State has appropriated, by the act of February 20, 1840, all funds that may accrue from the sale or lease of lands granted by Congress for seminary purposes, respectfully, through the Senators and Representatives in Congress from this State,

memorialize the Congress to indemnify the State of Mississippi and its University for the failure of title to one of the two townships of land intended to be granted by Congress for seminary purposes, as shown by the act of Congress of the twentieth of February, 1819.

The undersigned are encouraged to make this petition for the following reasons:

Equity requires that Mississippi should not be allowed to receive merely *one* township from Congress, when every other public land State has received *at least two.*

The will of Congress undoubtedly was, in the act of February 20, 1819, to grant two entire townships in trust to the Legislature of the State of Mississippi for the support of a seminary of learning.

The act of Congress of February 20, 1819, may evidently be construed as implying that Congress considered Jefferson College to be an institution under the control of the Territorial Legislature in Mississippi.

In fact, Jefferson College was at the first a private corporation, and continues to exist as such to the present time, independent of State control.

But even if it had been, previously to the passage of the act of Congress of February 20, 1819, under the control of the Territorial Legislature (which was not the case), it would have been not equitable for Congress to turn over to the State of Mississippi, upon her admission into the Union, the remnant of a grant of land which had proved utterly unprofitable to the college, and which was actually located in another State. The Territorial Legislature of Mississippi certainly had nothing whatever to do with the location of the lands granted to Jefferson Col-

lege, and it is certain that the location was so badly made that the trustees of Jefferson College afterward secured a change of location by the act of Congress of April 20, 1832.

In Minnesota, under Territorial administration, the two original townships named in the act of Congress of February 26, 1857, were almost lost to the State. When the State of Minnesota was admitted into the Union, Congress, by the act of July 8, 1870, gave to the State two townships in addition to the two mentioned in the act of February 26, 1857. The language of the act of July 8, 1870, justifies the statement of the Board of Regents of the Minnesota University that "certainly it was not the intention of Congress to turn over the debts and prospectively incumbered lands of an old and badly managed Territorial institution, but to give the State that was to be, a grant for a State university free from all connections with Territorial organizations." (*P.* 296, *Bureau of Education Circular of Information No.* 1, 1890.)

If the condition and prospects of Jefferson College in 1819, as shown in the authorized historical sketch of the college referred to previously in this paper, had been fully shown to Congress when the act of February 20, 1819, was pending, it is reasonable to assume that, even if Jefferson College had been under Territorial control, Congress would have acted in the case of Mississippi as it did in the case of Minnesota, and granted to the State an unincumbered full portion of land for a seminary of learning.

The intention of Congress to grant two townships failed through no lack of diligence on the part of the Legislature of the State.

It can be shown from an examination of the land laws of Congress, as well as from a study of the history of the

seminary funds in the several other States and Territories, twenty-one in number, *that Congress has uniformly, excepting in the case of Mississippi, taken whatever special action was necessary to secure to the State, when admitted into the Union, its full quota of seminary lands.* In the case of the State of Ohio, when there was danger that one of the three townships reserved by Congress for the future State might be lost to the State in the settlement of the affairs of John Cleves Symmes, within whose purchase of land it was located, Congress, in the act of March 3, 1803, instituted process for its recovery, and provided that, if this process should fail, another township should be granted in lieu of the first. In fact, another *was* granted to the State, outside the Symmes purchase. (*See p.* 30, *Circular of Information No.* 5, *Bureau of Education.*)

The action of Congress in reference to the seminary lands of the State of Indiana furnishes a most striking precedent for such action as is asked for in this memorial. By the act of March 26, 1804, one township was reserved from sale for the support of a seminary in the district which afterwards became the State of Indiana. The Territorial Legislature, on the twenty-ninth of November, 1806, granted a charter to the "*Vincennes University*" in terms almost identical with those of the charter of Jefferson College in Mississippi. In the same year, the *Legislature of Indiana Territory gave to the Vincennes University the seminary township* reserved from sale by the act of Congress of March 26, 1804. "In 1822 an act was passed by the General Assembly for the practical confiscation of its lands for the support of the new 'State Seminary' at Bloomington, and in 1824 the State formally declared the Vincennes institution extinct." It was charged that the "trustees had negligently permitted the corporation to die." In 1845 the corporation of Vincennes University

was revived by action of the Legislature, and the trustees laid claim to the lands of the first seminary township, which the Legislature had transferred to the State Seminary from the Vincennes University. In accordance with an act of the Legislature of the State, dated January 17, 1846, suit was brought by the *trustees of the Vincennes University against the State of Indiana* to test the question of title to this land, which was then being used by the *Indiana University*, into which the "State Seminary" had been changed. The final settlement of this suit was by the Supreme Court of the United States, at the December term, 1852, and in favor of the Vincennes University. By this decision, and from the sales made by the trustees of Vincennes University before its lands were transferred from it, the State University of Indiana lost control of one of the two townships intended by Congress for seminary purposes in the State of Indiana. *The loss was due to the fact that the Territorial Legislature had given this township to Vincennes University*, "a private corporation." But Congress, by the *act of July* 12, 1852, granted to the State of Indiana, for the use of the State University, a tract of land equal to that part of the first township which had been disposed of by the trustees of Vincennes University before the transfer, and *on the twenty-third of February*, 1854, made full restitution to the University of Indiana for the land *which it had lost through the act of the Territorial Legislature*, thus securing in trust to the Legislature of the State of Indiana its full quota of two entire townships. The statements regarding this case are based upon the acts of Congress cited, the records of the Supreme Court of the United States, and the publications of the United States Bureau of Education, Circulars of Information Nos. 1, 1890, and 1, 1891.

If the State of Indiana is indemnified for the failure of title to a township of land for seminary purposes due to

the act of the Territorial Legislature, should not Mississippi be indemnified for a similar failure of title caused by defect in the act of Congress?

The land actually received by the State of Mississippi under the act of February 20, 1819, consisting of *one township*, was located when there were valuable public lands subject to entry in the State, and was sold at an average price of more than five dollars per acre. The public lands now remaining in the State are much less valuable, and are subject to entry at not over $1.25 per acre. Moreover, the State of Mississippi and the University of the State have been deprived of the use of one township for more than fifty years. Therefore, in order that the State and the State University may be fully indemnified for the failure to make title to good and valuable lands while such were open to entry in the State, Congress is urged to grant, for the reasons stated, three townships of land in lieu of the one to which title failed. Such action would give to the State of Mississippi a full quota of four townships, the number actually granted, up to the present time, to each of the following named States: Florida (act of March 3, 1845); Wisconsin (acts of August 6, 1846, December 15, 1854); Alabama (acts of March 2, 1819, and of the Forty-eighth Congress, 1884.)

It is earnestly urged that the following be made a law:

AN ACT TO INDEMNIFY THE STATE OF MISSISSIPPI FOR THE FAILURE OF TITLE TO A TOWNSHIP OF LAND INTENDED TO BE GRANTED TO SAID STATE ON HER ADMISSION INTO THE UNION.

WHEREAS, Through the peculiar wording of the act of Congress of February 20, 1819, the State of Mississippi has failed to receive one of the two townships of land intended to be granted by Congress as her quota of land for the support of a seminary of learning, and has not

only been deprived of the use of said township for many years, but has lost the opportunity of selecting it from the more valuable lands of the public domain within her borders; *for remedy thereof*,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Governor of the State of Mississippi be authorized to select out of the lands of the United States, within the said State, now subject to private entry, sixty-nine thousand one hundred and twenty acres of land, in legal subdivisions, being a total equivalent to three townships, and shall certify the same to the Secretary of the Interior, who shall forthwith, on receipt of said certificate, issue to the *State of Mississippi* patents for said lands; *Provided*, The proceeds of said lands, when sold or leased, shall be, and forever remain, a fund for the use of the University of Mississippi.

The foregoing statements, and all of this memorial to the Congress of the United States, are approved, and the Senators and Representatives in Congress from Mississippi are respectfully and earnestly urged to present the matters herein stated to Congress, and to urge the speedy enactment of such a measure of relief and indemnity as is indicated above.

(Signed)

Will T. Martin,	R. A. Hill,
Robert H. Thompson,	Robert Lowry,
W. C. Wilkinson,	H. A. Barr,
J. A. Orr,	D. McKenzie,
H. F. Simrall,	J. S. McNeily,
Chas. B. Galloway,	H. L. Muldrow,

Members of the Board of Trustees of the University of Mississippi.